

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-757
)	
Kaspar Broadcasting Co. of Missouri)	NAL/Acct.No. 200332560001
)	
Licensee of AM Radio Station KWRE, in)	FRN 0003-7474-82
Warrenton, Missouri)	
)	
Frankfort, Indiana)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 28, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Kaspar Broadcasting Co. of Missouri (“Kaspar”), licensee of AM radio station KWRE, Warrenton, Missouri, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Commission's Rules (“Rules”).¹ Specifically, we find Kaspar Broadcasting Co. of Missouri apparently liable for failing to provide an effective locked fence enclosing the base of the station’s antenna tower.

II. BACKGROUND

2. On September 11, 2002, an agent from the Commission’s Kansas City Field Office inspected station KWRE located in Warrenton, Missouri. The agent found the station’s antenna tower, which had radio frequency potential at the base, enclosed inside a wooden fence containing wide openings allowing easy access to the tower base. In addition, the gate to the fence was open.

III. DISCUSSION

3. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed within effective locked fences or other enclosures. On September 11, 2002, KWRE’s antenna tower had radio frequency at the base and was not enclosed by an effective fence. The fencing around the tower consisted of wide spaced lumber capable of restricting access by livestock only. There was no other property fencing. A path was mowed to the tower allowing easy access to the tower via a gate which was found unlocked and open.

¹ 47 C.F.R § 73.49.

4. Based on the evidence before us, we find that on September 11, 2002, Kaspar Broadcasting Co. of Missouri willfully² violated Section 73.49 of the Rules by failing to provide an effective locked fence enclosing the base of the station's antenna tower.

5. Pursuant to Section 1.80(b)(4) of the Rules,³ the base forfeiture amount for AM tower fencing violations is \$7,000. Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁴ Considering the entire record and applying the statutory factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Kaspar Broadcasting Co. of Missouri is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Rules, by failing to provide an effective locked fence enclosing the base of the station's antenna tower.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Kaspar Broadcasting Co. of Missouri SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and *NAL*/Acct. No. referenced in the letterhead above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE *NAL*/Acct. No. and FRN referenced in the letterhead above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ 47 U.S.C. § 503 (b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁷ See 47 C.F.R. § 1.1914.

three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Kaspar Broadcasting Co. of Missouri at P. O. Box 545, Frankfort, IN., 46041.

FEDERAL COMMUNICATIONS COMMISSION

Robert McKinney
District Director, Kansas City Office
Enforcement Bureau

Attachment